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7 Attorneys for the Arizona State Board of Pharmacy

8 **BEFORE THE ARIZONA STATE BOARD OF PHARMACY**
9

10 In the Matter of

11 **Justine Liberato,**

12 Holder of License No. S019419
13 As a Pharmacist
In the State of Arizona

Board Case No. 13-0009-PHR

**CONSENT AGREEMENT
FOR CIVIL PENALTY AND
CONTINUING EDUCATION**

14
15 In the interest of a prompt and judicious settlement of this case, consistent with the
16 public interest, statutory requirements and the responsibilities of the Arizona State Board
17 of Pharmacy ("Board") under A.R.S. § 32-1901, *et. seq.*, Justine Liberato
18 ("Respondent"), holder of Pharmacist License No. S019419 in the State of Arizona and
19 the Board enter into the following Recitals, Findings of Fact, Conclusions of Law and
20 Order ("Consent Agreement") as a final disposition of this matter.

21 **RECITALS**

22 1. Respondent has read and understands this Consent Agreement and has had
23 the opportunity to discuss this Consent Agreement with an attorney, or has waived the
24 opportunity to discuss this Consent Agreement with an attorney.
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1 2. Respondent understands that she has a right to a public administrative
2 hearing concerning this matter at which hearing she could present evidence and cross
3 examine witnesses. By entering into this Consent Agreement, Respondent knowingly
4 and voluntarily relinquishes all right to such an administrative hearing, as well as rights
5 of rehearing, review, reconsideration, appeal, judicial review or any other administrative
6 and/or judicial action, concerning the matters set forth herein.

7 3. Respondent affirmatively agrees that this Consent Agreement shall be
8 irrevocable.

9 4. Respondent understands that this Consent Agreement or any part of the
10 agreement may be considered in any future disciplinary action by the Board against her.

11 5. Respondent understands this Consent Agreement deals with Board
12 Complaint No. 4160 involving allegations of unprofessional conduct against Respondent.
13 The investigation into these allegations against Respondent shall be concluded upon the
14 Board's adoption of this Consent Agreement.

15 6. Respondent understands that this Consent Agreement does not constitute a
16 dismissal or resolution of any other matters currently pending before the Board, if any,
17 and does not constitute any waiver, express or implied, of the Board's statutory authority
18 or jurisdiction regarding any other pending or future investigation, action or proceeding.

19 7. Respondent also understands that acceptance of this Consent Agreement
20 does not preclude any other agency, subdivision, or officer of this State from instituting
21 any other civil or criminal proceedings with respect to the conduct that is the subject of
22 this Consent Agreement.

23 8. Respondent acknowledges and agrees that, upon signing this Consent
24 Agreement and returning this document to the Board's Executive Director, she may not
25 revoke her acceptance of the Consent Agreement or make any modifications to the
26

1 document regardless of whether the Consent Agreement has been signed by the
2 Executive Director. Any modification to this original document is ineffective and void
3 unless mutually agreed by the parties in writing.

4 9. This Consent Agreement is subject to the approval of the Board and is
5 effective only when accepted by the Board and signed by the Executive Director. In the
6 event that the Board does not approve this Consent Agreement, it is withdrawn and shall
7 be of no evidentiary value and shall not be relied upon nor introduced in any action by
8 any party, except that the parties agree that should the Board reject this Consent
9 Agreement and this case proceeds to hearing, Respondent shall assert no claim that the
10 Board was prejudiced by its review and discussion of this document or any records
11 relating thereto.

12 10. If a court of competent jurisdiction rules that any part of this Consent
13 Agreement is void or otherwise unenforceable, the remainder of the Consent Agreement
14 shall remain in full force and effect.

15 11. Respondent understands that this Consent Agreement is a public record that
16 may be publicly disseminated as a formal action of the Board and may be reported as
17 required by law to the National Practitioner Data Bank and the Healthcare Integrity and
18 Protection Data Bank.

19 12. Respondent understands that any violation of this Consent Agreement
20 constitutes unprofessional conduct and may result in disciplinary action. A.R.S. §§ 32-
21 1901.01(B) (20) and A.R.S. § - 1927(A) (1).

22 13. Respondent agrees that the Board will adopt the following Findings of Fact,
23 Conclusions of Law and Order.

24 ...

25 ...

26 ...

1 ACCEPTED AND AGREED BY RESPONDENT

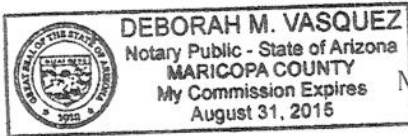
2 Justine Liberato

Dated: 4/4/13

3
4 Justine Liberato

5 Subscribed and sworn to before me in the County of Maricopa, State of Arizona,
6 this 4th day of April, 2013, by Justine Liberato.

7 Deborah M. Vasquez
8 NOTARY PUBLIC



10 My Commission expires: August 31st, 2015

11 FINDINGS OF FACT

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13 1. The Board is the duly constituted authority for licensing and regulating the
14 practice of pharmacy in the State of Arizona.

15 2. Respondent is the holder of license number S019419 to practice as a
16 pharmacist in the State of Arizona.

17 3. During all relevant times to these findings, Respondent worked as a
18 pharmacist at Safeway Pharmacy # 1515 (the "Pharmacy") located at 810 E. Glendale
19 Avenue, Phoenix, Arizona.

20
21 4. On or about November 29, 2012, a 6 month old patient had a prescription
22 for Cephalexin 250 mg/5ml liquid incorrectly filled with Cefdinir 250mg/ml at the
23 Pharmacy. When the patient's mother picked up the medication she was counseled that
24 the medication was to be taken 2.5 ml orally three times a day for ten (10) days and to
25 refrigerate the medication. The patient's mother later reviewed the written material with
26

1 the medication which said that it should be stored at room temperature. The patient's
2 mother contacted the pharmacy and was given a replacement bottle of Cefdinir 250
3 mg/ml. At that time the patient's mother noted that the dosage information on the bottle
4 indicated that the dose for children was 14 mg/kg/day. The patient weighed
5 approximately sixteen (16) pounds.
6

7 5. Respondent was the pharmacist on duty at the Pharmacy when the medication was
8 initially dispensed and did not recognize the error during counseling or verification.
9

10 CONCLUSIONS OF LAW

11
12 1. The Board possesses jurisdiction over the subject matter and over
13 Respondent pursuant to A.R.S. § 32-1901 *et seq.*

14 2. The Board may discipline a pharmacist who has engaged in unprofessional
15 conduct. A.R.S. § 32-1927(A) (1).

16 3. The conduct and circumstances described above constitutes unprofessional
17 conduct pursuant to A.R.S. § 32-1901.01(B) (2) (Violating any federal or state law, rule
18 or regulation relating to the manufacture or distribution of drugs and devices or the
19 practice of pharmacy).

20 4. The conduct described above violated Arizona Administrative Code R4-23-
21 402(A)(10)(b) (In dispensing a prescription medication from a prescription order, a
22 pharmacist shall check prescription order data entry to ensure that the data input is for the
23 correct drug by verifying the drug name, strength, and dosage form).
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5. The conduct described above violated Arizona Administrative Code R4-23-402(A) (11) (In dispensing a prescription medication from a prescription order, a pharmacist shall make a final accuracy check on the completed prescription medication).

6. The conduct described above violated Arizona Administrative Code R4-23-402 (A) (6) (A pharmacist shall verify that a dosage is within proper limits).

ORDER

Based upon the above Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED THAT Respondent shall:

1. Pay a civil penalty of \$250.00 within **90 days** of the effective date of this Order; and

2. Successfully complete and provide proof of successful completion to the Board of eight (8) contact hours (0.8 C.E.U.) of American Council on Pharmaceutical Education course(s) on the topic of patient safety. The required course(s) must be completed within **90 days** of the effective date of this Order, must be pre-approved by Board staff, and shall be in addition to the requirements of A.R.S. § 32-1936 and A.A.C. R4-23-204.

3. Respondent shall pay all costs associated with complying with this Consent Agreement.

4. If Respondent violates this Order in any way or fails to fulfill the requirements of this Order, the Board, after giving the Respondent notice and the opportunity to be heard, may revoke, suspend or take other disciplinary actions against Respondent's license. The issue at such a hearing will be limited solely to whether this Order has been violated.

1 DATED this 10th day of May, 2013.

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3 (Seal)

ARIZONA STATE BOARD OF PHARMACY

4
5 By: 

6 HAL WAND, R.Ph.
Executive Director

7 ORIGINAL OF THE FORGOING FILED
8 this 10 day of May, 2013, with:

9 Arizona State Board of Pharmacy
10 1616 W. Adams Street
Phoenix, Arizona 85007

11 COPY OF THE FOREGOING MAILED
BY CERTIFIED MAIL
12 this 10 day of May, 2013, to:

13 Justine Liberato
2149 W. Le Marche Ave.
14 Phoenix, Arizona 85023
Respondent

15 EXECUTED COPY OF THE FOREGOING MAILED
16 this 10 day of May, 2013, to:

17 Montgomery Lee
18 Assistant Attorney General
1275 W. Washington Street, CIV/LES
19 Phoenix, Arizona 85007
Attorney for the Board

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21 Doc #3196758
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